IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Date of decision: 25.09.2006

Criminal Misc. Application No. 37 of 2004

AND

Criminal Misc. Application No. 19 of 2004

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Initial of Judge)

Date: 25.09.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

CRIMINAL MISC. APPLICATION NO. 37 OF 2004

Balwant Singh Chuphal S/o Late Sher Singh Chuphal, R/o Malli Bamori, Haldwani, District Nainital.

.....Applicant

Versus

1. State of Uttaranchal.
2. Ramesh Chandra Pandey (Pathik), Advocate/Generalist/Shop Keeper, R/o Nilyam Colony, Near Maharishi School, Rampur Road, Haldwani, Distt. Nainital.

Opp. Parties/Respondents.

Sri P.M.N. Singh, Senior Advocate with Ms. Prabha Noliyal, learned counsel for the applicant.
Learned A.G.A. for the State.
Shri Lalit Belwal, Advocate for Resp. No.2.

And

CRIMINAL MISC. APPLICATION NO. 19 OF 2004.

1. Bhuwan Chandra Joshi, S/o Late Shri D.B. Joshi R/o Chotti Mukhani Haldwani, Nainital.
2. Pooran Upadhyay, S/o Shri Badri Dutt Upadhyay, R/o Basant Vihar Haldwani, Nainital.
3. Hemant Bagdwal S/o Shri Kishan Singh Bagadwal, R/o Ambica Vihar Haldwani, Nainital.
4. Rajesh Harbola S/o Shri Heera Ballabh Harbola, R/o Tikonia Haldwani, Nainital.
5. Arun Pandey S/o Shri Lalit Pandey, R/o Heeranagar Haldwani, Nainital.
6. Bhuwan Joshi S/o Heera Ballabh Joshi, R/o Near Sanskrit School Nawabi Road, Haldwani. Nainital.

.....Petitioners.

Versus

1. State of Uttaranchal.

2. Judicial Magistrate, Haldwani.
3. Ramesh Pandey S/o Shri Kirshana Nand Pandey,
R/o Limay Colony Near Maharishi School Haldwani,
Distt. Nainital.

Sri J.C. Sharma & Sri I.S. Mehra, learned counsel for the petitioners.
Learned A.G.A. for the State.
Sri Lalit Belwal Advocate for Respondent No.2

Hon'ble Prafulla C. Pant, J.

1. By means of these two petitions, moved under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), the petitioners have sought quashing of Criminal Case No. 941 of 2003 State Vs. Balwant Singh Chuphal and others (arising out of Case Crime No. 2472 of 2002 relating to offence punishable under Sections 454, 380 & 506 I.P.C. with Police Station Haldwani), pending in the Court of Judicial Magistrate, Haldwani.

2. Heard learned counsel for the parties and perused the papers.

3. Brief facts of the case are that the respondent Ramesh Chandra Pandey "Pathik" Advocate lodged an First Information Report against petitioner Balwant Singh Chuphal relating to an incident dated 7.8.2002, in which it is alleged that he was tenant in two shops situated in Heera Nagar, Haldwani, belonging to Parvatiya Sanskritik Utthan Manch. It is further alleged in the First Information

Report that when informant Ramesh Chandra Pandey was out of station due to pilgrimage to Amarnath Yatra, petitioner Balwant Singh Chuphal, with the help of some persons, broke open the shops and removed goods including printing press which was being run by wife of complainant, in one of the shops. On his return from Amarnath Yartra informant Ramesh Chandra Pandey lodged the First Information Report which was registered at Case Crime No. 2472 of 2002. It appears that after investigation a charge sheet was filed against the petitioner Balwant Singh Chuphal and a separate charge sheet was filed against the other petitioners namely, Bhuwan Chandra Joshi, Pooran Upadhyay, Hemant Bagadwal, Rajesh Harbola, Arun Pandey and Bhuwan Joshi S/o Heera Ballabh Joshi.

4. The petitioners have challenged the criminal proceedings pending against them before the Trial Court on various grounds. It is alleged in the petition that no offence is made out against the petitioners. The statements of witnesses under Section 161 Cr.P.C. were recorded by the Investigating Officer more than once. It is alleged that the Magistrate has erred in law in taking cognizance on the impugned charge sheet. The charge sheets are also challenged on the ground that for an offence punishable under Section 441 I.P.C. (as amended vide U.P. Act No. 31 of 1961) a 15 days notice was required to be served on the accused which was not done as such offence punishable under Section 454 I.P.C. has

not been made out. As to the offence punishable under Section 406 I.P.C. the petitioners have alleged that the said offence is non cognizable. The criminal proceedings are also challenged on the ground that the House in question belongs to Parvatiya Sanskritik Utthan Manch against whom proceedings would have been drawn only through its Secretary.

5. Sri P.M.N. Singh, learned counsel for the petitioner Balwant Singh Chuphal argued that an offence of "Criminal trespass", defined under Section 441 of the I.P.C. (as amended by U.P. Act No. 31 of 1961), requires prior notice of 15 days to withdraw from the possession. The said Section 441 as amended by aforesaid U.P. Act (applicable in Uttaranchal) reads as under:

> "441 Criminal trespass"-whoever enters into or upon property in possession of another with intent to commit an offence or to intimidate, insult of annoy any person in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to in intimidate, insult or annoy any such person, or with intent to commit an offence,
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> or, having entered into or upon such property, whether before or after the coming into force of the Criminal Law (U.P. Amendment) Act, 1961, with the intention of taking unauthorized possession or making unauthorized use of such property fails to

withdraw from such property or its possession or use, when called upon to do so by that another person by notice in writing, duly served upon him, by the date specified in the notice, is said to commit 'criminal trespass'".

The above definition of Criminal trespass is intended only to constitute an offence punishable under Section 447 and 448 of the I.P.C. From no strech of imagination can it be said that a notice would be required to constitute the offence of Lurking house-trespass or House-breaking in order to commit offence punishable with imprisonment under Section 454 of the I.P.C. Therefore this court is unable to accept the contention of learned counsel for the petitioner.

6. It is also contended on behalf of the petitioners that the dispute between the petitioners and respondents is that of the landlord and tenant and is of Civil nature, as such Criminal Proceedings in respect of such dispute cannot be maintained. True, that admittedly house in question belongs to Parvatiya Sanskritik Utthan Manch and the informant (respondent) Ramesh Chandra Pandey admittedly was tenant in one shop but that does not mean that even if alleged act of the petitioner constitutes offence punishable under Section 380 of the I.P.C., it cannot be said that origin of the dispute being of Civil nature, the Criminal proceedings cannot be maintained.

7. It is submitted on behalf of the petitioners that statements of the witnesses were recorded twice or thrice by the Investigating Officer under Section 161 of Cr.P.C. and as such the impugned charge sheets are concocted and motivated one. It is a settled principle of law that this court in its jurisdiction under Section 482 of Cr.P.C. cannot appreciate and re-appreciate half backed evidence to examine its correctness. Such question as to whether the witnesses have spoken truth or not is yet to be examined by the trial court after they are examined there where the charge sheets are pending.

8. Learned counsel for the petitioners drew attention of this court to the principle of law laid down in ***State of Karnataka Vs. L. Muniswamy (1977) 2 Supreme Court Cases 699*** and argued that on the ground of insufficiency of evidence Criminal Proceedings can be quashed. However, Apex Court in its latest judgment has opined differently. In ***State of Karnataka Vs. M. Devendrappa (2002) 3 Supreme Court Cases 89*** Supreme Court has held that High Court should not assume the role of the trial court and embark upon an enquiry as to reliability of the evidence and sustainability of the accusation on a reasonable appreciation of such evidence. My attention was also drawn on behalf of the petitioner to principle of law laid down in ***Union of India Vs. Prafulla Kumar Samal A.I.R. 1979 Supreme Court 366*** and its argued that test and duty of the Court is to see that whether the offence is made out or not before

charge is framed against the accused. On going through the said case law I find that it no where says that under Section 482 the proceedings should be quashed in the case like the present one. Parties may make their submissions before trial court before the charge is framed, whether evidence is sufficient to frame charge or not.

9. Principle of law laid down in ***Kanwal Sood Vs. Nawal Kishore A.I.R. 1983 Supreme Court 159*** clarifies that to constitute the Criminal trespass intention to commit an offence is an essential ingredient. The said case law shows that the observations were made in appeal and this court is of the view that at the time of the framing of the charge the petitioner can show to the trial court that the offence is not made out. The principle of law laid down in ***State of Andhra Pradesh Vs. Goloconda Linga Swamy Judgment Today 2004 (6) Supreme Court 34*** also does not help the petitioner for in the said case the circumstances were totally different and First Information Report itself did not disclose the essential ingredients of the offence alleged to have been committed by the accused.

10. For the reasons as discussed above this court is of the view that both the pe titions are liable to be dismissed with the observations that all the pleas raised before this court as to their innocence can be raised before the trial court by the petitioners. The petitions are

accordingly dismissed with the observations that if the petitioners are arrested or surrender before the trial court their bail applications, if moved, shall be disposed of by the court concerned without unreasonable delay.

(Prafulla C. Pant, J.)

Dated: 25th September 2006.
P. Bandhavakar